

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

AUTRY EARL BARNEY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:09cv223HSO-JMR

INGERSOLL-RAND CO., ET AL.

DEFENDANTS

**MEMORANDUM OPINION AND ORDER DISMISSING
PLAINTIFF'S COMPLAINT PURSUANT TO FED. R. CIV. P. 41(b)**

THIS MATTER COMES BEFORE THE COURT *sua sponte* for dismissal, Plaintiff having failed to comply with this Court's Order entered May 29, 2009. The Court, after review of the record and pleadings on file, finds that Plaintiff's Complaint should be dismissed for failure to prosecute pursuant to FED. R. CIV. P. 41(b).

On May 15, 2009, a Report and Recommendations was entered by United States Magistrate Judge John M. Roper which denied Plaintiff's application for *in forma pauperis* status. On May 29, 2009, this Court adopted said Report and Recommendations to deny Plaintiff's application to proceed *in forma pauperis* and granted Plaintiff ten (10) days from the date of the Order, or until June 5, 2009, to tender, to the Clerk of Court, the requisite filing fee. The same Order warned Plaintiff that failure to abide and comply with the Court's directives could result in the dismissal of Plaintiff's Complaint for want of prosecution under Rule 41 (b) of the Federal Rules of Civil Procedure. Ct. R. 15. To date, Plaintiff has failed to comply with the Court's Order and pay the filing fee.

FED. R. CIV. P. 41(b) provides that “[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of any action.” The Court may also “dismiss an action *sua sponte* under Rule 41(b) for failure to comply with a court order.” *Long v. Simmons*, 77 F.3d 878, 879 (5th Cir. 1996), *citing McCullough v. Lynaugh*, 835 F.2d 1126 (5th Cir. 1988). Because Plaintiff has failed to pay the requisite filing fee or otherwise prosecute this cause, the Court finds that Plaintiff’s case should be dismissed pursuant to Rule 41 (b).

IT IS THEREFORE ORDERED AND ADJUDGED, that the above captioned cause should be and is hereby **DISMISSED FOR FAILURE TO COMPLY WITH A COURT ORDER PURSUANT TO FED. R. CIV. P. 41(b)**.

SO ORDERED AND ADJUDGED, this the 8th day of June, 2009.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE